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10/753,853	01/08/2004	Kellie Michelle Lecompte	AUS920030726US1	6045

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EXAMINER


ASTORINO, MICHAEL C

ART UNIT PAPER NUMBER

3736

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/753,853	Applicant(s) LECOMPTE ET AL. 	
	Examiner Michael C Astorino	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The examiner acknowledges the amendment filed January 5, 2005, wherein claims 1-20 are pending, and claim 9 and 15 has been amended.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8, 10-11, and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Tavori US Patent Number US Patent Number 5,724,025 A.

Claim 1. A method for personal stress monitoring comprising:

- (a) receiving one or more physiologic indicators; (sensors 28-39)
- (b) comparing values of the one or more physiologic indicators to corresponding baseline values; (column 7, lines 33-56, upper limit, lower limit, and delta)
- (c) determining if, in response to step (b) if the one or more physiologic indicators equals or exceeds at least one preselected threshold condition relative to baseline values (column 7, lines 44-56, upper limit, lower limit, and delta); and
- (d) if at least one threshold condition is equaled or exceeded in step (c), emitting a remedial action corresponding to a highest level threshold condition equaled or exceeded, (alarm signal 23).

Claim 2. The method of claim 1 wherein the at least one threshold condition comprises user profile data. (column 7, lines 44-56, upper limit, lower limit, and delta is considered as the profile data).

Claim 3. The method of claim 1 wherein the at least one threshold condition comprises a condition relative to a single physiologic indicator value or a condition relative to a composite of physiologic indicator values. (column 7, lines 44-56, upper limit, lower limit, and delta)

Claim 4. The method of claim 1 further wherein the one or more physiologic indicators are received via a wireless network device from one or more sensors for sensing the user's corresponding physiologic indicator. (communication means 13 and cable equivalent 25, column 5, lines 40-64)

Claim 8. A computer program product embodied in a computer readable medium for personal stress monitoring comprising programming instructions for:

- (a) receiving one or more physiologic indicators (sensors 28-39);
- (b) comparing values of the one or more physiologic indicators to corresponding baseline values (column 7, lines 33-56, upper limit, lower limit, and delta);
- (c) determining if, in response to step (b) if the one or more physiologic indicators equals or exceeds at least one preselected threshold condition relative to baseline values (column 7, lines 44-56, upper limit, lower limit, and delta); and

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(d) if at least one threshold condition is equaled or exceeded in step (c), emitting a remedial action corresponding to a highest level threshold condition equaled or exceeded. (alarm signal 23).

Claim 10. The computer program product of claim 8 wherein the at least one threshold condition comprises a condition relative to a single physiologic indicator value or a condition relative to a composite of physiologic indicator values. (column 7, lines 33-56, upper limit, lower limit, and delta).

Claim 11. The computer program product of claim 8 further wherein the one or more physiologic indicators are received via a wireless network device from one or more sensors for sensing the user's corresponding physiologic indicator. (communication means 13 and cable equivalent 25, column 5, lines 40-64)

Claim 15. A data processing system comprising:

- (a) circuitry operable for receiving one or more physiologic indicators (sensors 28-39);
- (b) circuitry operable for comparing values of the one or more physiologic indicators to corresponding baseline values (column 7, lines 33-56, upper limit, lower limit, and delta);
- (c) circuitry operable for determining if, in response to step (b) if the one or more physiologic indicators equals or exceeds at least one preselected threshold condition relative to baseline values (column 7, lines 44-56, upper limit, lower limit, and delta); and

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(d) circuitry operable for, if at least one threshold condition is equaled or exceeded in step (c), emitting a remedial action corresponding to a highest level threshold condition equaled or exceeded. (alarm signal 23).

Claim 16. The data processing system of claim 15 wherein the at least one threshold condition comprises user profile data. (column 7, lines 44-56, upper limit, lower limit, and delta is considered as the profile data).

Claim 17. The data processing system of claim 15 wherein the at least one threshold condition comprises a condition relative to a single physiologic indicator value or a condition relative to a composite of physiologic indicator values. (column 7, lines 44-56, upper limit, lower limit, and delta).

Claim 18. The data processing system of claim 15 further wherein the one or more physiologic indicators are received via a wireless network device from one or more sensors for sensing the user's corresponding physiologic indicator. (communication means 13 and cable equivalent 25, column 5, lines 40-64).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

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international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5, 8-9, 12, 14-16, and 19-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Suzuki et al. US Patent Number 6,569,094 B2.

Claim 1. A method for personal stress monitoring comprising:

(a) receiving one or more physiologic indicators (Physiological sensors 1026, 1027, 1028, 1029, 10211, 10212 in figure 1)

(b) comparing values of the one or more physiologic indicators to corresponding baseline values (S818 in figure 8);

(c) determining if, in response to step (b) if the one or more physiologic indicators equals or exceeds at least one preselected threshold condition relative to baseline values (S818 in figure 8); and

(d) if at least one threshold condition is equaled or exceeded in step (c), emitting a remedial action corresponding to a highest level threshold condition equaled or exceeded (S812, S820," In case of an abnormal result, the decision result is written in the corpus (S819), and the advice is presented to the user by speech synthesis").

Claim 5. The method of claim 1 wherein a first set of baseline values are generated by training on a set of physiologic indicator values for the user. (S819, column 10 lines 1-53)

Claim 8. A computer program product embodied in a computer readable medium for personal stress monitoring comprising programming instructions for:

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(a) receiving one or more physiologic indicators (Physiological sensors 1026, 1027, 1028, 1029, 10211, 10212 in figure 1);

(b) comparing values of the one or more physiologic indicators to corresponding baseline values (S818 in figure 8);

(c) determining if, in response to step (b) if the one or more physiologic indicators equals or exceeds at least one preselected threshold condition relative to baseline values (S818 in figure 8); and

(d) if at least one threshold condition is equaled or exceeded in step (c), emitting a remedial action corresponding to a highest level threshold condition equaled or exceeded. (S812, S820," In case of an abnormal result, the decision result is written in the corpus (S819), and the advice is presented to the user by speech synthesis").

Claim 9. The computer program product of claim 8 further comprising programming instructions for determining if a remedial action is manually initiated; and retrieving a user selection for said remedial action. (S812, S820," In case of an abnormal result, the decision result is written in the corpus (S819), and the advice is presented to the user by speech synthesis", and column 11, lines10-38).

Claim 12. The computer program product of claim 8 wherein a first set of baseline values are generated by training on a set of physiologic indicator values for the user. (S812, S820," In case of an abnormal result, the decision result is written in the corpus (S819), and the advice is presented to the user by speech synthesis", and column 11, lines10-38).

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Claim 14. The computer program product of claim 8 wherein each threshold condition is associated with a remedial action, and wherein the programming instructions further include instructions for selectably overriding a remedial action. (S812, S820,” In case of an abnormal result, the decision result is written in the corpus (S819), and the advice is presented to the user by speech synthesis”, and column 11, lines10-38).

Claim 15. A data processing system comprising:

- (a) circuitry operable for receiving one or more physiologic indicators (Physiological sensors 1026, 1027, 1028, 1029, 10211, 10212 in figure 1);
- (b) circuitry operable for comparing values of the one or more physiologic indicators to corresponding baseline values (S818 in figure 8);
- (c) circuitry operable for determining if, in response to step (b) if the one or more physiologic indicators equals or exceeds at least one preselected threshold condition relative to baseline values (S818 in figure 8); and
- (d) circuitry operable for, if at least one threshold condition is equaled or exceeded in step (c), emitting a remedial action corresponding to a highest level threshold condition equaled or exceeded. (S812, S820,” In case of an abnormal result, the decision result is written in the corpus (S819), and the advice is presented to the user by speech synthesis”, and column 11, lines10-38).

Claim 16. The data processing system of claim 15 wherein the at least one threshold condition comprises user profile data. (S812, S820,” In case of an abnormal result, the decision result is written in the corpus (S819), and the advice is presented to the user by speech synthesis”, and column 11, lines10-38).

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Claim 19. The data processing system of claim 15 wherein a first set of baseline values are generated by training on a set of physiologic indicator values for the user. (S812, S820,” In case of an abnormal result, the decision result is written in the corpus (S819), and the advice is presented to the user by speech synthesis”, and column 11, lines10-38).

Claim 20. The data processing system of claim 16 wherein user profile data further comprises one or more remedial actions associated with a corresponding one of the one or more threshold conditions, the data processing system further including circuitry operable for selectably overriding a remedial action in the user profile. (S812, S820,” In case of an abnormal result, the decision result is written in the corpus (S819), and the advice is presented to the user by speech synthesis”, and column 11, lines10-38).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-7, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. US Patent Number 6,569,094 B2 as applied to claims 1, 5, 8 and 12 above, and further in view of Lang et al US Patent Number 6,358,208 B1.

In regards to claims 6-7, and 13. Suzuki et al. does not disclose baseline values comprise a set of nominal values for a population based on one or more factors including height, weight and gender. However Lang et al. a reference that analogously uses thresholds, baselines and alarms to inform users/patient of an impending unwelcome physiological problem uses baseline values comprising a set of nominal values for a population based on one or more factors including height, weight and gender (Threshold values can be defined by comparing measured ILT at a given time point with the patient's baseline ILT, e.g. ILT measured at the time of hospital admission or at the time of a previous outpatient visit. Threshold values can also be defined by comparing measured ILT at a given time point with the patient's baseline ILT and/or normal reference values of ILT (e.g. ILT values in an age, sex, race, or weight-matched healthy reference population). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the patient baseline of Suzuki in view of the referenced weight population baseline of Lang et al., since Lang et al. states the alternative as a known choice in the medical/physiological monitoring art (column 50, lines 1-14).

Response to Arguments

Applicant's arguments filed January 5, 2005 have been fully considered but they are not persuasive.

The applicant has refuted the rejection of Tavori on page 8 of 16, of the remarks section, by asserting that, "Emitting a basic signal such as an audible or visual alarm is not the emitting of remedial actions." However, there is no definition in the specification of what a "remedial action" is. The plain language of "remedial" is serving to cure or correct and "action" is defined as something done, (The New American Webster Dictionary). Hence, the examiner's interpretation of remedial action is, something done to cure or correct. The emission of a basic

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signal such as an audible or visual alarm in the case of Tavori is something done to cure or correct. Simply stated, Tavori's the emission of a basic signal such as an audible or visual alarm is a remedial action.

The applicant on page 8 states, Tavori does not teach "...multiple corresponding levels of threshold conditions that can be equaled or exceeded." The examiner invites the applicant to look over this portion of Tavori again, column 7, lines 58-64, states "In FIG. 3B, there are several graphs indicating the representation of instructions, data, and results, of device 10. The graphs in FIG. 3B may be interpreted in several ways: As a non-limiting example, one of the graphs may represent an actual sensor readout, its normal value, 55, delta, 58, upper limit, 56, and lower limit, 57; and the second graph shows the same" and column 7, lines 43-57, "In FIG. 3B, there are several graphs indicating the representation of instructions, data, and results, of device 10. The graphs in FIG. 3B may be interpreted in several ways: As a non-limiting example, one of the graphs may represent an actual sensor readout, its normal value, 55, delta, 58, upper limit, 56, and lower limit, 57; and the second graph shows the same." Thus, the Tavori patent teaches the use of maximum (56) and minimum (57) threshold as well as a delta (58) to activate the alarm. The delta, is disclosed as a combination of sensed signals, and as shown in figure 3b, the delta is a range within the maximum and minimum of the alarm conditions. As such, the setting of a delta is one level which maybe equaled or exceeded and the maximum is another level that can be equaled or exceeded.

In regards to Suzuki prior art rejection, the applicant states on page 10 of 16 of the remarks section, "Suzuki does not teach levels of threshold conditions, or emitting differing remedial actions corresponding to the various levels of threshold conditions." However, the applicant does not claim various levels of threshold conditions. For example, in claim 1 the applicant states, (see bolded words for illustration purposes and points of emphasis)

Claim 1. A method for personal stress monitoring comprising:

- (a) receiving **one or more** physiologic indicators (Physiological sensors 1026, 1027, 1028, 1029, 10211, 10212 in figure 1)
- (b) comparing values of the **one or more** physiologic indicators to corresponding baseline values (S818 in figure 8);
- (c) determining if, in response to step (b) if the **one or more** physiologic indicators equals or exceeds at least one preselected threshold condition relative to baseline values (S818 in figure 8); and
- (d) if **at least one** threshold condition is equaled or exceeded in step (c), emitting a remedial action corresponding to a highest level threshold condition equaled or exceeded (S812, S820,” In case of an abnormal result, the decision result is written in the corpus (S819), and the advice is presented to the user by speech synthesis”).

The use of “one” and “at least one” in the disjunctive form by the use of “or” in the claim restricts the claim scope to be rejected by one threshold. The only term that implies more than one threshold is the term “highest” in “highest level threshold condition”. However, this is not enough to overcome the Suzuki rejection for at least the reason that there are numerous measured physiological information (1026-1029, 10211-10212). Additionally, the delta maybe interpreted as another threshold.

In regards to the remaining arguments that Suzuki does not meet claimed language by anticipation, each argument center around the idea of the definition of “remedial action.” As stated above, there is no definition in the specification of what a “remedial action” is. The plain

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language of “remedial” is serving to cure or correct and “action” is defined as something done, (The New American Webster Dictionary). Hence, the examiner’s interpretation of remedial action is, something done to cure or correct. This interpretation although broad, is proper. It appears as though the applicant is using another definition of what a “remedial action” is. Regardless of that, the applicant’s arguments are not persuasive because of applicant’s unduly restrictive and apparent illusory definition of “remedial action.”

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C Astorino whose telephone number is 703-306-9067. The examiner can normally be reached on Monday-Friday, 10:00AM to 4:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Astorino
March 21, 2005


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